

LAW OFFICES OF THOMAS K. CROWE, P.C.

2300 M STREET, N.W.
SUITE 800
WASHINGTON, D.C. 20037
(202) 973-2890
FAX (202) 973-2891
FAX (202) 293-3083
E-MAIL tkcrowe@aol.com

RECEIVED

AUG 29 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 29, 1997

BY MESSENGER

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20037

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 96-128; Exclusion of
The Furst Group, Inc. from the List of Interexchange
Carriers Required to Pay Interim, Flat-Rate Compensation

Dear Mr. Caton:

The Furst Group, Inc. ("TFG"), by its attorneys, respectfully requests that the Commission take whatever action may be necessary to clarify that TFG does not owe compensation under the interim, flat-rate compensation plan to payphone service providers ("PSPs"). Moreover, since TFG is currently being sued by PSPs for its refusal to pay such compensation at this time, TFG asks that the Commission address this matter on an expedited basis.

As you are aware, the Commission's September 20, 1996 Report and Order in CC Docket No. 96-128 established an interim, flat-rate compensation mechanism under which PSPs would be compensated for the lost value of interstate access calls placed from the PSPs' equipment prior to the implementation of a per-call payment system. Under the interim mechanism, the Report and Order required that interexchange carriers ("IXCs") which earn \$100 million in annual toll revenues must pay compensation to the PSPs.¹ While the exemption for small IXCs under this compensation mechanism has been ruled to be arbitrary and capricious by the U.S. Court of Appeals for the D.C. Circuit and remanded to the Commission for reconsideration, it currently

¹ See In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541, 205601-20604.(1996) modified on recon., Order on Reconsideration, 11 FCC Rcd 21233, 21286-21294 (1996).

No. of Copies rec'd
List ARCADE

024

remains in force pending further action by the Commission.²

The Report and Order included an appendix (i.e., Appendix F) listing each of the IXC's which had reported toll revenues exceeding \$100 million in 1995, and which are therefore obligated to pay compensation to the PSPs. TFG was included in this list in error. As TFG's Executive Vice President and Chief Financial Officer attests in the affidavit included herewith as Exhibit A, while TFG reported to the Commission that it had operating revenues of \$109,314,287 for 1995, this figure included income from non-toll sources and was plainly not intended to serve as a statement of TFG's toll revenue.³

When TFG submitted its TRS Fund Worksheet to the Commission on April 19, 1996 (prior to the adoption of the Report and Order), TFG explicitly reported that it enjoyed gross revenues from its toll services totaling just \$99,473,832.00.⁴ Moreover, since this gross figure includes service fees, late payment fees, taxes, and other miscellaneous sources of company income, TFG has demonstrated to the Commission that it actually enjoyed direct toll revenues of \$90,928,354.90 in 1995.⁵ Under either measure of toll income, it is clear that TFG falls below the Commission's threshold.

It is therefore apparent that TFG was erroneously placed on the list of IXC's responsible for paying compensation to the PSPs under the interim, flat-rate compensation mechanism. Since discovering this problem, TFG has sent notification letters to the PSPs informing them that TFG does not in fact owe compensation since its actual toll revenue falls below the \$100 million threshold.

TFG is currently being sued by American Public Communications Council, Inc. ("APCC"), the agent of a group of PSPs, in the U.S. District Court for the District of Columbia as well as by GCB Communications, Inc. ("GCB") in the U.S. District Court for the District of Arizona for its refusal to pay their invoices for compensation. Notwithstanding TFG's assurances that a mistake has been made, both organizations have continued to press their lawsuits; indeed, APCC recently amended its complaint to seek a total of \$104,823.01 in payments, plus interest and legal fees. Moreover, additional similar suits could be filed against the company. Clearly, this matter has become quite serious, and the continued uncertainty concerning TFG's responsibility for paying PSPs is exposing TFG to considerable liability as well as legal expense.

² See Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding, Public Notice (Aug. 5, 1997) at 1-2, n.3.

³ A copy of TFG's March 29, 1996 letter reporting its 1995 operating revenues to the FCC is included as Exhibit B.

⁴ A copy of TFG's 1996 TRS Report is included as Exhibit C.

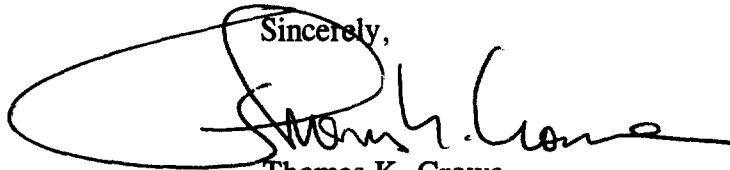
⁵ A copy of TFG's June 14, 1997 letter informing the Commission of this data, and attaching a spreadsheet showing TFG's sources of toll revenue for 1995, is attached as Exhibit D.

William F. Caton
August 29, 1997
Page 3

As a result of the foregoing, TFG respectfully requests that the Commission take appropriate action to clarify that TFG does not owe PSPs compensation under the Commission's interim payphone compensation mechanism, since its actual toll revenues fall beneath the Commission's threshold. Due to TFG's ongoing litigation with PSPs as well as the risk of additional lawsuits, TFG further requests that the Commission take such action on an expedited basis.

Please direct any questions concerning the foregoing to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas K. Crowe", is written over a large, loopy circular flourish.

Thomas K. Crowe
Michael B. Adams, Jr.,
Counsel for The Furst Group, Inc.

Exhibits

cc: Jeffrey L. Bockol
Jill Papenhausen

Exhibit A

AFFIDAVIT

State of New Jersey

County of Burlington

ss.

JEFFREY L. BOCKOL, being duly sworn according to law, deposes and says:

1. I am the Executive Vice President and Chief Financial Officer of The Purst Group, Inc. ("TPG"), a New Jersey Corporation.
2. On March 29, 1997, TPG reported to the FCC that it had total annual operating revenues of \$109,314,287 for 1995. This sum combined both toll revenues and non-toll revenues received by TPG, and was in no way intended to serve as a statement of TPG's toll revenues.
3. As TPG informed the FCC in a letter dated June 14, 1997, TPG's direct toll revenues totaled \$90,928,354.90 in 1995. Inclusive of service fees, late payment fees, taxes, and other miscellaneous company income reported to the FCC, TPG enjoyed gross revenues of \$99,473,832.00 for its toll services in 1995. TPG's gross revenues for 1995 of \$99,473,832.00 were reported to the FCC when TPG submitted its TRS Fund Worksheet on April 19, 1996.
4. Under either measure, TPG did not have toll revenues equal to or in excess of \$100 million in 1995.


Jeffrey L. Bockol

Sworn and subscribed before me this

29th day of August, 1997.


Notary Public

MARILYN A. GRIM

NOTARY PUBLIC OF NEW JERSEY

My commission expires April 1, 2001

Exhibit B



Corporate Headquarters

March 29, 1996

Ms. Kelle Rangos
Federal Communications Commission
2033 M Street, NW Room 500
Mail Stop 1600F
Washington DC 20554

RE: 1995 Annual Report
Stop Code 1600F

Dear Ms. Rangos:

This letter is to satisfy the annual reporting requirements for 1995. The Furst Group, Inc. had operating revenues of \$109,314,287 for 1995. The Furst Group, Inc. is a telecommunications reseller therefore there is no communications plant to report.

Please note that The Furst Group, Inc. does not submit a Form 10-K to the Securities and Exchange Commission and does not prepare an annual report to stockholders.

If you have any questions or need any additional information please call Jeffrey L. Bockol at 609-268-8000.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey L. Bockol", is written over a circular stamp.

Jeffrey L. Bockol
Treasurer
The Furst Group, Inc.

Exhibit C

1996 TRS Fund Worksheet

(Please read instructions before completing -- report actual amounts billed to customers during the year without subtracting uncollectibles; report revenues in whole dollars only; do not report negative amounts.)

Approved by OAH

2000-0000

Expires 06/30/98

Estimated Average Burden Hours Per Response: 2 hours

Block 1: Carrier Identification

TRS Company Code supplied by NECA

806508

1a Legal Name of Carrier

The First Group Inc.

1b Principal Communications Business (check only one)

☐ LSC

☐ Cellular

☐ Mobile

☐ CSP

☐ DC

☐ CAP

☐ Pay Telephone

☒ Reseller

☐ Other (explain)

☐ PCS

☐ Prepaid Card

1c Holding Company

1d Principal CIC code used for interchange service

10732

2 Principal Business Name for Carrier

The First Group Inc.

3 Complete Mailing Address of Carrier Corporate Headquarters

459 Oakshade Rd
Shamong NJ 08088

4 Telephone # for Customer Inquiries

(800) - 233-4376

Block 2: Carrier Revenue Data for Calendar Year 1995

Note: Please report whole dollars even if amounts are rounded

(a)	Gross Revenues (b)	% Interstate (c)	Special study (d)	Interstate Revenues (e) = (b) x (c)
Local Services				
5 Local exchange service	\$	%		\$
6 Local private line service	\$	%		\$
7 Mobile radio, cellular, paging & PCS	\$	%		\$
8 Alternative access & other	\$	%		\$
Long Distance				
9 Interstate access	\$ 50,468,390	100 %		\$ 50,468,390
10 Intra-state access	\$ 20,706,466	0 %		\$ 0
11 Operator service & Pay Telephone	\$	%		\$
12 Non-operator switched toll service	\$	%		\$
13 Long distance private line service	\$	%		\$
14 All other long distance	\$ 23,242,776	%		\$ 0
15 Total lines 5 through 14	\$ 94,417,632			\$ 50,468,390

Block 3: Calculation of Contribution

Note: Please report whole dollars without further rounding.

16 Interstate Revenue from Line 15e	\$ 50,468,390
17 Contribution Rate:	x 0.0003
18 Total CONTRIBUTION for April 1996 through March 1997: line 16 x line 17 (The minimum contribution is \$100)	\$ 16,655
19 Contribution to be paid this month: (Enter the amount from line 18 if it is less than \$1200. Otherwise, the contributor may divide the amount on line 18 by 120 to calculate equal monthly contributions.) Check here for monthly billing reminders <input checked="" type="checkbox"/>	\$ 1387.92

Block 4: CERTIFICATION

I certify that I am an officer of the carrier named above, that I have examined the foregoing report and to the best of my knowledge, information and belief, all statements of fact contained in this worksheet are true and that said worksheet is an accurate statement of the affairs of the above named carrier for the period January 1, 1996 through December 31, 1996.

20 Printed Name of Officer	Jeffrey L. Bosko
21 Position with carrier	Vice President - Finance
22 Signature	
23 Date	4-19-96
24 Contact Person	John D. Cann
25a Telephone Number of Contact Person	(609) - 268-8000
25b Complete Mailing Address of Contact: (Filing information and the 1997 TRS Fund Worksheet will be sent to this address.)	459 Oakshade Rd Shamong NJ 08088

26 This filing is:

☒ Original filing for 1996

☐ Revised filing for 1996

Mail checks to: NECA TRS P.O. Box 28000 Pittsburgh, PA 15251-0000 For additional information call NECA 801-284-8173
Mail worksheet and photocopy of checks to: NECA - POC TRS Fund Administration 100 South Jefferson Rd. Whippany, NJ 07981

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER THE COMMUNICATIONS ACT, 47 U.S.C. 220(e)

PCC 431

Revised March 1996

Exhibit D



Corporate Headquarters

June 14, 1997

Federal Communications Commission
Common Carrier Bureau
ATTN: Michael Carowitz, Esquire
2025 M. Street NW
Washington, DC 20554

Dear Michael:

I have enclosed The Furst Group, Inc. gross revenues for the year of 1995 as an addendum to my correspondence dated February 7, 1997, validating Furst's position that it did not meet the financial requirements of the Federal Communications Commission ruling of November 8, 1996 (Docket 91-35) referenced in Appendix F, Interim Compensation Obligations, page 5, Federal Communications Commission DA 96-1666, regarding payphone compensation.

If you need additional information please don't hesitate to contact our Chief Financial Officer, Mr. Jeffrey L. Bockol, at 1-800-818-4736, extension 4346.

Thank you.

Sincerely,

Jill Papenhausen
Corporate Director
Consumer & Government Affairs

	DA	INTRA	INTER	OFF	OVER	CC	BOO	FEEB	ADJ'S	TOTAL
615	554,592.28	5,712,478.85	14,601,178.74	867,435.32	1,828,787.60	785,343.10	974,045.77	1,741,366.82	(2,870,789.83)	24,194,458.82
620	382,444.29	4,117,044.18	9,094,319.75	799,884.55	2,142,183.86	50,888.07	635,559.57	1,957,440.48	(523,851.32)	18,855,913.43
621	10,900.29	68,851.27	245,683.25	11,229.30	31,513.84	5,898.21	85,811.05	25,956.58	(31,233.88)	455,809.11
622	19,981.41	189,839.58	518,993.53	40,509.81	78,287.33	6,588.82	18,328.78	104,391.42	(12,470.14)	939,528.14
623	521,442.23	5,419,118.93	12,049,074.71	836,405.82	1,744,166.18	154,099.52	539,250.87	2,592,718.58	(1,740,188.22)	22,118,105.82
624	141,398.64	1,625,875.39	2,980,588.36	244,086.89	438,826.72	119,457.35	273,974.89	680,085.81	(691,429.86)	5,590,863.99
625	228,190.57	2,175,037.25	5,308,302.55	398,521.80	1,121,035.28	18,823.97	128,440.30	1,088,229.64	(390,832.11)	10,070,049.03

NI

677	205,862.80	1,323,468.11	4,250,188.84	110,423.18	891,220.58	65,816.14	2,413,285.72	808,804.82	(963,043.23)	8,905,826.78
-----	------------	--------------	--------------	------------	------------	-----------	--------------	------------	--------------	--------------

	2,062,812.29	20,612,813.56	49,045,429.73	3,308,486.27	8,272,000.38	1,208,912.98	5,084,498.75	8,778,991.13	(7,423,598.17)	90,928,354.90
--	--------------	---------------	---------------	--------------	--------------	--------------	--------------	--------------	----------------	---------------